IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19081 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANTHA VIBHAG NAVNIRMAN MANDAL - Petitioner(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR HJ NANAVATI for Petitioner(s) : 1,
MR SHIVANG SHUKLA, AGP. for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.
DS AFF.NOT FILED (N) for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 13/09/2007

ORAL JUDGMENT

1 Rule. Learned Advocates appearing for the respective respondents are directed to waive service of Rule. Considering the narrow scope of controversy between the parties the petition is taken up for final hearing and disposal today.

2 On 10.09.2007 the following order came to be made by the Court directing the respondent State Government to place on record the course of action that the State Authority intended to adopt in the circumstances recorded in the order.

> *"(1) This petition has been filed praying for direction to the respondent-State authorities to allot students in relation to PTC Course (Gujarati Medium) to be conducted by the petitioner-College. It is an admitted fact that the petitioner is already running a PTC Course and the instruction of medium is English. The petitioner applied to respondent No.3-National Council for Teacher Education (NCTE) for recognition in relation to PTC Course (Gujarati Medium) for girls. Initially the petitioner was granted conditional recognition by NCTE vide order dated 26.04.2007 / 03.05.2007, which was followed up by final recognition order dated 28.06.2007. It appears that the same code / identification number was allotted to the petitioner-Institution by NCTE. NCTE also in its order did not clarify whether the permission was for additional intake of 50 students or was for a*

new college and hence, the respondent-State did not take any action for including the name of the petitioner-Institution in the list of recognized institutions qua PTC Course (Gujarati Medium) for allotment of students for Academic Year 2007-2008.

(2) Upon issuance of notice NCTE has put in appearance through learned advocate Mr.A.J.Shastri, who has made a statement, under instructions of one Shri Rakesh Johari, who in turn has instructed after verification of the record, that the application and the recognition relate to additional intake of 50 girl students for PTC Course (Gujarati Medium).

(3) In light of the aforesaid statement, the respondent-State authority is directed to place on record the course of action that the State authority intends to adopt in the circumstances as the principal issue between the petitioner and the State now stands clarified. To be listed on 13.09.2007.

Sd/-
[D.A.MEHTA,J]"

3 Today the learned Assistant Government Pleader has tendered Affidavit-in-Reply dated 13.09.2007 wherein after narrating various historical events the following averments are made in paragraphs No.8, 9 and 10 in reply to the petition:

"8. However, till date the petitioner Trust has not submitted any clarification from NCTE. When the captioned Special Civil Application came up for hearing before this Hon'ble Court, the ld. Advocate appearing for NCTE submitted to the Hon'ble Court that the said order of recognition passed in favour of the petitioner is in shape of additional intake qua PTC College (Gujarati Medium). In view of this the respondent authority is required to file present Affidavit-in-reply. With profound respect, it is submitted that now the process of admission is over in the discipline of PTC Course. In view of this, the petitioner Trust would not be entitled to claim allotment of students in the College managed and run by the petitioner Trust in PTC Course (Gujarati Medium).

9. It is also submitted that as per oral instructions given to the authorized person of the institution on 5/7/2007, institution failed to produce the necessary corrigendum order/or clarification from NCTE Bhopal regarding the recognition order dated 28/6/2007 (whether recognition given is for additional Intake of English Medium or a new PTC College of Gujarati Medium) uptill now. As the college is of English Medium, only additional Intake of English Medium could be sanctioned and students for only English

Medium can be allotted. But the institute demanded for allotting students for Gujarati Medium. Hence, the name of the institute was not included in the list of Gujarati Medium and students were not allotted accordingly. Now the admission procedure for the year 2007-08 is also over.

10. In view of the peculiar facts and circumstances of the case, the petitioner would not be entitled to relief qua allotment of students."

4 Having heard the learned Assistant Government Pleader and after going through the aforestated averments the Court enquired of learned Assistant Government Pleader as to whether there are students available for Gujarati Medium who are already listed in merit list and are awaiting admission. The learned Assistant Government Pleader accepted that such waiting list of students awaiting admission exists but the respondent State Authority is not in a position to allot the students as the admission process is over.

5 It is apparent that this is a case where an institution, which is already existing, has adequate infrastructure and facilities for imparting education and which has been granted recognition unconditionally and finally by NCTE on

28.06.2007, but only because the respondent authority was not satisfied as to whether the order made by NCTE was in relation to students for Gujarati Medium or for existing English Medium College that the name of the petitioner College was not included in the list of Colleges to whom the students were to be allotted. Therefore, the respondent State Authority cannot be permitted to take shelter behind procedural formalities at this stage in absence of any other substantial ground for denying the allotment of students.

6 Accordingly taking into consideration the fact that there are meritorious students already included in the merit list who are awaiting admission the respondent State Authority is directed to complete the process of allotment of the students in seriatim commencing from serial number of the list at which the admission had stopped when the admission process is stated to have been stopped. Such allotment shall be completed within a period of ten days from today but not later than 25.09.2007 without awaiting for certified copy of this judgment which has been pronounced in the open Court and the learned Assistant Government Pleader is directed to convey this to the authority concerned.

7 The petition is allowed accordingly in the aforesaid terms. Rule made absolute. There shall be no order as to costs.

Sd/-
(D.A.Mehta, J.)

m.m.bhatt